

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BASIL SEGGOS, as *Commissioner of the
New York State Department of Environmental
Conservation and Trustee of New York State's
Natural Resources*, and the STATE OF NEW
YORK,

ORDER
17-CV-2684 (MKB) (LB)

Plaintiffs,

v.

THOMAS DATRE, JR.; CHRISTOPHER GRABE; 5
BROTHERS FARMING CORP.; DAYTREE AT
CORTLAND SQUARE INC.; IEV TRUCKING
CORP.; COD SERVICES CORP.; ALL ISLAND
MASONRY & CONCRETE, INC.; BUILDING DEV
CORP.; DIMYON DEVELOPMENT CORP.;
TOUCHSTONE HOMES LLC; SAMS RENT AND
CONSTRUCTION; SAM'S RENT, INC.; EAST
COAST DRILLING NY INC.; TRITON
CONSTRUCTION COMPANY, LLC; SUKRAM
AND SONS LTD.; "JOHN DOE"; ATRIA
BUILDERS, LLC; WOORI CONSTRUCTION INC.;
PLUS K CONSTRUCTION INC.; NY FINEST
ENTERPRISES INC.; MONACO CONSTRUCTION
CORP.; ALEF CONSTRUCTION INC.; 158
FRANKLIN AVE. LLC; LUCIANO'S
CONSTRUCTION, INC.; ILE CONSTRUCTION
GROUP, INC.; EAST END MATERIALS, INC.;
SPARROW CONSTRUCTION CORP.; CIANO
CONCRETE CORP.; FREEDOM CITY
CONTRACTING CORP.; and TOTAL
STRUCTURE SERVICES INC.,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiffs Basil Seggos and the State of New York ("Plaintiffs") commenced the above-captioned action on May 4, 2017 against more than two dozen contractors, waste brokers, and

haulers who were involved with dumping “tens of thousands of tons of construction waste containing hazardous substances” in a public park in Brentwood, Long Island in violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (“CERCLA”), as amended; New York Real Property Actions and Proceedings Law § 841; and New York common law. (Compl. ¶¶ 1–2, Docket Entry No. 1.) On February 13, 2023, Plaintiffs moved pursuant to Rule 37 of the Federal Rules of Civil Procedure for an order directing entry of the defaults as to Defendants Thomas Datre, Jr., 5 Brothers Farming Corp., Sparrow Construction Corp., and Plus K Construction Inc. (“Nonresponsive Defendants”) for their failure to participate in discovery. (Pls.’ Mot. for Entry of Defaults, Docket Entry No. 511.) On February 23, 2023, the Court referred Plaintiffs’ motion to Magistrate Judge Lois Bloom for a report and recommendation. (Order dated Feb. 23, 2023.) By report and recommendation dated March 22, 2023, Judge Bloom recommended that the Court strike the Nonresponsive Defendants’ answers and crossclaims, and enter defaults against Nonresponsive Defendants (the “R&R”). (R&R 6, Docket Entry No. 516.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte*

v. Suffolk Cnty., 531 F. App'x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

Accordingly, the Court adopts the R&R, strikes the Nonresponsive Defendants’ answers and crossclaims, (Plus K Construction Inc. Answer, Docket Entry No. 66; Sparrow Construction Corp. Answer and Crossclaims, Docket Entry No. 186), and enters defaults against the Nonresponsive Defendants. Plaintiffs are directed to serve copies of this Order upon the

Nonresponsive Defendants at their last known addresses and to file proof of service with the Court.

Dated: June 28, 2023
Brooklyn, New York

SO ORDERED:

/s/ MKB
MARGO K. BRODIE
United States District Judge